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Opinion
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Attorney General

Concord

November 12, 1975

Mr. Leo W. Fraser, Jr.
Acting Insurance Commissioner
169 Manchester Street
Concord, New Hampshire 03301

Dear Mr. Fraser:

This letter will answer three questions with reference to 1975 Laws, 349, which you have raised in connection with certain rate approval proceedings currently being conducted pursuant to RSA 419:6 and RSA 420:6. The three questions, as we understand them, are these:

(1) Is the minimum required coverage for the mental or nervous conditions set forth in 1975 Laws, 349:2, 3 mandatory as of January 1, 1976 with regard to existing subscribers?

*349:2 now
RSA 419:6*

(2) Do the two \$500 minimum coverage provisions contained, respectively, in 1975 Laws, 349:2 and 1975 Laws, 349:3 operate cumulatively?

*349:3 now
RSA 420:5-9*

(3) Does the phrase "psychiatrist licensed under RSA 329" appearing in 1975 Laws, 349:2, 3 include the entire class of those persons licensed under RSA 329?

The answer to your first question is "yes". 1975 Laws, 349:2 and 3 each provide in part:

Every group contract with a subscriber shall contain coverage for mental or nervous conditions at least as favorable to the subscriber as the following minimum benefits.... [Emphasis added.]

1975 Laws, 349:4 provides: "This act shall take effect January 1, 1976".

The phrase "shall contain" in the portion of Sections 2 and 3 above quoted is unequivocal, and has been used consistently in those statutes setting forth required provisions in hospital and medical service corporation contracts, in order to secure minimum protection for the subscribing public. RSA 419:5 (Supp. 1973); RSA 420:5 (Supp. 1973). The Legislature has established a pattern of affirmatively stating any intention to stagger prospectively amendments to said statutes. 1969 Laws, 163:5, for example, provides as follows:

This act shall take effect one hundred and twenty days after its passage and shall apply only to all new contracts delivered or issued for delivery within this state thereafter. .

See also: 1973 Laws, 160:2. Consistent with the decision in Hayes v. LeBlanc, 114 N.H. 141, 144 (1974), "the conspicuous absence of such qualifying language" in 1975 Laws, 349:4 "suggests an intent to alter the minimum requirement with respect to all contracts...."

The answer to your second question is "yes". 1975 Laws, 349:2, 3 each set out certain coverage requirements subject to the following proviso:

... provided that benefits ... under this paragraph with respect to the covered person may be limited to five hundred dollars in the policy or calendar year, whichever is applicable. [Emphasis added.]

The phrase "under this paragraph" dispositively limits the application of each \$500 minimum to the particular paragraph in which each appears. Each is thus separate and distinct from any such minimum appearing elsewhere with reference to other classes of insurers.

The answer to your third question is "no". In the phrase "psychiatrists licensed under RSA 329", contained in 1975 Laws, 349:2, 3, the use of the word "psychiatrists" as opposed to "physicians and surgeons", is an express manifestation of a legislative choice to restrict the class more narrowly than to those "licensed under RSA 329". RSA 329 provides for the licensing of physicians and surgeons, but deliberately does not distinguish between qualifications in the treatment of physical as opposed to mental disorders.

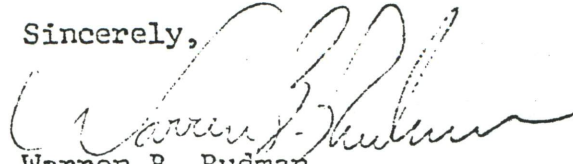
Mr. Fraser

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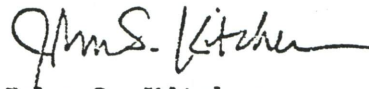
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RSA 329:1. However, the Legislature does make the distinction elsewhere, in spheres other than licensing: for example, and for a common legislative definition of the word "psychiatrist", see RSA 135-B:2, XV (Supp. 1973).

Sincerely,

A handwritten signature in dark ink, appearing to read "Warren B. Rudman". The signature is fluid and cursive, with a large, sweeping initial "W".

Warren B. Rudman
Attorney General

A handwritten signature in dark ink, appearing to read "John S. Kitchen". The signature is more compact and cursive than the one above, with a clear "J" and "K".

John S. Kitchen
Assistant Attorney General

JSK/tlr